

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION


Robert M. Lance,)	C/A No. 3:04-2247-18
)	
Petitioner,)	
)	
v.)	ORDER and OPINION
)	
John LaManna, Warden FCI Edgefield, S.C.))	
)	
Respondent.)	
_____)	

Petitioner Robert M. Lance requests this court to reconsider its January 3, 2006 Order denying his motion under 28 U.S.C.A. § 2241. Filed on January 19, 2006, petitioner's motion is entitled "Motion for Order Vacating Judgment Entered in the Above Cited Case or Alternatively Notice of Appeal and Request for Certificate of Appealability." The motion lists nine general grounds for his requested relief, including the assertion that this court construed his § 2241 motion as a § 2255 motion without notice. As petitioner notes, the court must first advise a petitioner if the court converts a § 2241 motion into the movant's first § 2255 motion. See U.S. v. Emmanuel, 288 F.3d 644, 649 (4th Cir. 2002) (holding "if a prisoner files a motion that is not denominated a § 2255 motion and the court at its option prefers to convert it into the movant's first § 2255 motion, the court shall first advise the movant that it intends to so recharacterize the motion."). However, Emmanuel does not apply to the present circumstance because this court's January 3 Order did not construe petitioner's § 2241 motion as a § 2255. Rather, the court analyzed the motion as a § 2241 and concluded it was the improper remedy because petitioner was challenging the validity of his sentence. Further, the January 3 Order noted that "even if § 2241 was the proper relief, petitioner's claim would

be barred for failure to exhaust administrative remedies.” See January 3, 2006 Order at 3, n.1. Finally, Emmanuel addresses a court’s recharacterization of a non-§ 2255 motion into a movant’s first § 2255 filing. Even if considered as a § 2255, petitioner’s present filing would amount to a successive motion, since his first § 2255 was denied in 1999.

For the these reasons, it is therefore **ORDERED** that petitioner’s “Motion for Order Vacating Judgment Entered in the Above Cited Case or Alternatively Notice of Appeal and Request for Certificate of Appealability” is **DENIED**.

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

March 29, 2006
Charleston, South Carolina